

HOUSE BILL NO. 136

INTRODUCED BY A. OLSON

BY REQUEST OF THE ENERGY AND TELECOMMUNICATIONS INTERIM COMMITTEE

A BILL FOR AN ACT ENTITLED: "AN ACT DEFINING THE TERM "COST-EFFECTIVE RENEWABLE RESOURCE PROJECT" FOR UNIVERSAL SYSTEM BENEFITS PROGRAMS PURPOSES; AMENDING SECTIONS 69-8-102, 69-8-103, AND 69-8-402, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 69-8-102, MCA, is amended to read:

"69-8-102. Legislative findings and policy. The legislature finds and declares the following:

(1) The generation and sale of electricity is becoming a competitive industry.

(2) Montana customers should have the freedom to choose their electricity supply and related services in accordance with this chapter. Affording this opportunity serves the public interest.

(3) The interests of small Montana consumers must be protected through the provision of adequate and reliable default supply service at the lowest long-term total cost.

(4) The financial integrity of electrical utilities must be fostered.

(5) The public interest requires the continued protection of consumers through:

(a) licensure of electricity suppliers;

(b) provision of information to consumers regarding electricity supply service;

(c) provision of a process for investigating and resolving complaints;

(d) continued funding for public purpose programs for:

(i) cost-effective local energy conservation;

(ii) low-income customer weatherization;

(iii) cost-effective renewable resource projects and applications;

(iv) research and development programs related to energy conservation and renewables;

(v) market transformation; and

(vi) low-income energy assistance;

(e) assurance of service reliability and quality; and

(f) prevention of anticompetitive and abusive activities.

(6) A utility in the state of Montana may not be advantaged or disadvantaged in the competitive electricity supply market, including the consideration of the existence of universal system benefits programs and the comparable level of funding for those programs throughout the regions neighboring Montana."

Section 2. Section 69-8-103, MCA, is amended to read:

"69-8-103. Definitions. As used in this chapter, unless the context requires otherwise, the following definitions apply:

(1) "Aggregator" or "market aggregator" means an entity, licensed by the commission, that aggregates retail customers, purchases electrical energy, and takes title to electrical energy as an intermediary for sale to retail customers.

(2) "Assignee" means any entity, including a corporation, partnership, board, trust, or financing vehicle, to which a utility assigns, sells, or transfers, other than as security, all or a portion of the utility's interest in or right to transition property. The term also includes an entity, corporation, public authority, partnership, trust, or financing vehicle to which an assignee assigns, sells, or transfers, other than as security, the assignee's interest in or right to transition property.

(3) "Board" means the board of investments created by 2-15-1808.

(4) "Broker" or "marketer" means an entity, licensed by the commission, that acts as an agent or intermediary in the sale and purchase of electrical energy but that does not take title to electrical energy.

(5) "Cooperative utility" means:

(a) a utility qualifying as an electric cooperative pursuant to Title 35, chapter 18; or

(b) an existing municipal electric utility as of May 2, 1997.

(6) "Cost-effective renewable resource project" means electricity supplied from an off-grid renewable resource project, with a cost of production per kilowatt hour, including amortization of installed facilities over the reasonable life of the installation, that is less than or equal to the sum of the distribution services provider's projected electricity supply costs for the same period, plus the avoided transmission and distribution costs.

~~(6)(7)~~ "Customer" or "consumer" means a retail electric customer or consumer. The university of Montana, pursuant to 20-25-201(1), and Montana state university, pursuant to 20-25-201(2), are each considered a single retail electric customer or consumer with a single individual load.

~~(7)(8)~~ "Customer-generator" means a user of a net metering system.

~~(8)~~(9) "Default supplier" means a distribution services provider of a utility that has restructured in accordance with this chapter.

~~(9)~~(10) "Default supply service" means the provision of electricity supply by a default supplier.

~~(10)~~(11) "Distribution facilities" means those facilities by and through which electricity is received from a transmission services provider and distributed to the customer and that are controlled or operated by a distribution services provider.

~~(11)~~(12) "Distribution services provider" means a utility owning distribution facilities for distribution of electricity to the public.

~~(12)~~(13) "Electricity supplier" means any person, including aggregators, market aggregators, brokers, and marketers, offering to sell electricity to retail customers in the state of Montana.

~~(13)~~(14) "Electricity supply costs" means the actual costs of providing default supply service, including but not limited to:

(a) capacity costs;

(b) energy costs;

(c) fuel costs;

(d) ancillary service costs;

(e) demand-side management and energy efficiency costs;

(f) transmission costs, including congestion and losses;

(g) billing costs;

(h) planning and administrative costs; and

(i) any other costs directly related to the purchase of electricity, management of default electricity supply costs, and provision of default supply and related services.

~~(14)~~(15) "Financing order" means an order of the commission adopted in accordance with 69-8-503 that authorizes the imposition and collection of fixed transition amounts and the issuance of transition bonds.

~~(15)~~(16) (a) "Fixed transition amounts" means those nonbypassable rates or charges, including but not limited to:

(i) distribution;

(ii) connection;

(iii) disconnection; and

(iv) termination rates and charges that are authorized by the commission in a financing order to permit

1 recovery of transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs
2 and of acquiring transition property through a plan approved by the commission in the financing order, including
3 the costs of issuing, servicing, and retiring transition bonds.

4 (b) If requested by the utility in the utility's application for a financing order, fixed transition amounts must
5 include nonbypassable rates or charges to recover federal and state taxes in which the transition cost recovery
6 period is modified by the transactions approved in the financing order.

7 ~~(16)~~(17) "Functionally separate" means a utility's separation of the utility's electricity supply, transmission,
8 distribution, and unregulated retail energy services assets and operations.

9 ~~(17)~~(18) "Interested person" means a retail electricity customer, the consumer counsel established in
10 5-15-201, the commission, or a utility.

11 ~~(18)~~(19) "Large customer" means, for universal system benefits programs purposes, a customer with
12 an individual load greater than a monthly average of 1,000 kilowatt demand in the previous calendar year for
13 that individual load.

14 ~~(19)~~(20) "Local governing body" means a local board of trustees of a rural electric cooperative.

15 ~~(20)~~(21) "Low-income customer" means those energy consumer households and families with incomes
16 at or below industry-recognized levels that qualify those consumers for low-income energy-related assistance.

17 ~~(21)~~(22) "Net metering" means measuring the difference between the electricity distributed to and the
18 electricity generated by a customer-generator that is fed back to the distribution system during the applicable
19 billing period.

20 ~~(22)~~(23) "Net metering system" means a facility for the production of electrical energy that:

21 (a) uses as its fuel solar, wind, or hydropower;

22 (b) has a generating capacity of not more than 50 kilowatts;

23 (c) is located on the customer-generator's premises;

24 (d) operates in parallel with the distribution services provider's distribution facilities; and

25 (e) is intended primarily to offset part or all of the customer-generator's requirements for electricity.

26 ~~(23)~~(24) "Nonbypassable rates or charges" means rates or charges that are approved by the commission
27 and imposed on a customer to pay the customer's share of transition costs or universal system benefits
28 programs costs even if the customer has physically bypassed either the utility's transmission or distribution
29 facilities.

30 ~~(24)~~(25) "Pilot program" means an experimental program using a select set of small customers to assess

1 the potential for developing and offering customer choice of electricity supply to small customers in the future.

2 ~~(25)~~(26) "Public utility" means any electric utility regulated by the commission pursuant to Title 69,
3 chapter 3, on May 2, 1997, including the public utility's successors or assignees.

4 ~~(26)~~(27) "Qualifying load" means, for payments and credits associated with universal system benefits
5 programs, all nonresidential demand-metered accounts of a large customer within the utility's service territory
6 in which the customer qualifies as a large customer.

7 ~~(27)~~(28) "Small customer" means a residential customer or a commercial customer who has an
8 individual account with an average monthly demand in the previous calendar year of less than 50 kilowatts or
9 a new residential or commercial customer with an estimated average monthly demand of less than 50 kilowatts
10 of a public utility that has restructured pursuant to Title 35, chapter 19, or this chapter.

11 ~~(28)~~(29) "Transition bondholder" means a holder of transition bonds, including trustees, collateral agents,
12 and other entities acting for the benefit of that bondholder.

13 ~~(29)~~(30) "Transition bonds" means any bond, debenture, note, interim certificate, collateral, trust
14 certificate, or other evidence of indebtedness or ownership issued by the board or other transition bonds issuer
15 that is secured by or payable from fixed transition amounts or transition property. Proceeds from transition bonds
16 must be used to recover, reimburse, finance, or refinance transition costs and to acquire transition property.

17 ~~(30)~~(31) "Transition charge" means a nonbypassable rate or charge to be imposed on a customer to pay
18 the customer's share of transition costs.

19 ~~(31)~~(32) "Transition cost recovery period" means the period beginning on July 1, 1998, and ending when
20 a utility customer does not have any liability for payment of transition costs.

21 ~~(32)~~(33) "Transition costs" means:

22 (a) a public utility's net verifiable generation-related and electricity supply costs, including costs of
23 capital, that become unrecoverable as a result of the implementation of this chapter or of federal law requiring
24 retail open access or customer choice;

25 (b) those costs that include but are not limited to:

26 (i) regulatory assets and deferred charges that exist because of current regulatory practices and can
27 be accounted for up to the effective date of the commission's final order regarding a public utility's transition plan
28 and conservation investments made prior to universal system benefits charge implementation;

29 (ii) nonutility and utility power purchase contracts executed before May 2, 1997, including qualifying
30 facility contracts;

(iii) existing generation investments and supply commitments or other obligations incurred before May 2, 1997, and costs arising from these investments and commitments;

(iv) the costs associated with renegotiation or buyout of the existing nonutility and utility power purchase contracts, including qualifying facilities and all costs, expenses, and reasonable fees related to issuing transition bonds; and

(v) the costs of refinancing and retiring of debt or equity capital of the public utility and associated federal and state tax liabilities or other utility costs for which the use of transition bonds would benefit customers.

~~(33)~~(34) "Transition period" means the period ending July 1, 2027.

~~(34)~~(35) "Transition property" means the property right created by a financing order, including without limitation the right, title, and interest of a utility, assignee, or other issuer of transition bonds to all revenue, collections, claims, payments, money, or proceeds of or arising from or constituting fixed transition amounts that are the subject of a financing order, including those nonbypassable rates and other charges and fixed transition amounts that are authorized by the commission in the financing order to recover transition costs and the costs of recovering, reimbursing, financing, or refinancing the transition costs and acquiring transition property, including the costs of issuing, servicing, and retiring transition bonds. Any right that a utility has in the transition property before the utility's sale or transfer or any other right created under this section or created in the financing order and assignable under this chapter or assignable pursuant to a financing order is only a contract right.

~~(35)~~(36) "Transmission facilities" means those facilities that are used to provide transmission services as determined by the federal energy regulatory commission and the commission.

~~(36)~~(37) "Transmission services provider" means an entity controlling or operating transmission facilities.

~~(37)~~(38) "Universal system benefits charge" means a nonbypassable rate or charge to be imposed on a customer to pay the customer's share of universal system benefits programs costs.

~~(38)~~(39) "Universal system benefits programs" means public purpose programs for:

(a) cost-effective local energy conservation;

(b) low-income customer weatherization;

(c) cost-effective renewable resource projects and applications, including those that capture unique social and energy system benefits or that provide transmission and distribution system benefits;

(d) research and development programs related to energy conservation and renewables;

(e) market transformation designed to encourage competitive markets for public purpose programs; and

(f) low-income energy assistance.

1 ~~(39)~~(40) "Utility" means any public utility or cooperative utility."

2
3 **Section 3.** Section 69-8-402, MCA, is amended to read:

4 **"69-8-402. Universal system benefits programs.** (1) Universal system benefits programs are
5 established for the state of Montana ~~to ensure continued funding of and new expenditures for energy~~
6 ~~conservation, renewable resource projects and applications, and low-income energy assistance.~~

7 (2) Beginning January 1, 1999, 2.4% of each utility's annual retail sales revenue in Montana for the
8 calendar year ending December 31, 1995, is established as the initial funding level for universal system benefits
9 programs. To collect this amount of funds on an annualized basis in 1999, the commission shall establish rates
10 for utilities subject to its jurisdiction and the governing boards of cooperatives shall establish rates for the
11 cooperatives. These universal system benefits charge rates must remain in effect through December 31, 2005.

12 (a) The recovery of all universal system benefits programs costs imposed pursuant to this section is
13 authorized through the imposition of a universal system benefits charge assessed at the meter for each local
14 utility system customer as provided in this section.

15 (b) A utility must receive credit toward annual funding requirements for the utility's internal programs
16 or activities that qualify as universal system benefits programs, including those amortized or nonamortized
17 portions of expenditures for the purchase of power that are for the acquisition or support of ~~renewable energy,~~
18 ~~conservation-related activities, or low-income energy assistance~~ universal system benefits programs, and for
19 large customers' programs or activities as provided in subsection (7). The department of revenue shall review
20 claimed credits of the utilities and large customers pursuant to 69-8-414.

21 (c) A utility's distribution services provider at which the sale of power for final end use occurs is the utility
22 that receives credit for the universal system benefits programs expenditure.

23 (d) A customer's distribution services provider shall collect universal system benefits funds less any
24 allowable credits.

25 (e) For a utility to receive credit for low-income-related expenditures, the activity must have taken place
26 in Montana.

27 (f) If a utility's or a large customer's credit for internal activities does not satisfy the annual funding
28 provisions of subsection (2), then the utility shall make a payment to the universal system benefits fund
29 established in 69-8-412 for any difference.

30 (3) Cooperative utilities may collectively pool their statewide credits to satisfy their annual funding

1 requirements for universal system benefits programs and low-income energy assistance.

2 (4) A utility's transition plan must describe how the utility proposes to provide for universal system
3 benefits programs, including the methodologies, such as cost-effectiveness and need determination, used to
4 measure the utility's level of contribution to each program.

5 (5) A utility's minimum annual funding requirement for low-income energy and weatherization assistance
6 is established at 17% of the utility's annual universal system benefits funding level and is inclusive within the
7 overall universal system benefits funding level.

8 (a) A utility must receive credit toward the utility's low-income energy assistance annual funding
9 requirement for the utility's internal low-income energy assistance programs or activities.

10 (b) If a utility's credit for internal activities does not satisfy its annual funding requirement, then the utility
11 shall make a payment for any difference to the universal low-income energy assistance fund established in
12 69-8-412.

13 (6) An individual customer may not bear a disproportionate share of the local utility's funding
14 requirements, and a sliding scale must be implemented to provide a more equitable distribution of program
15 costs.

16 (7) (a) A large customer:

17 (i) shall pay a universal system benefits programs charge with respect to the large customer's qualifying
18 load equal to the lesser of:

19 (A) \$500,000, less the large customer credits provided for in this subsection (7); or

20 (B) the product of 0.9 mills per kilowatt hour multiplied by the large customer's total kilowatt hour
21 purchases, less large customer credits with respect to that qualifying load provided for in this subsection (7);

22 (ii) must receive credit toward that large customer's universal system benefits charge for internal
23 expenditures and activities that qualify as a universal system benefits programs expenditure, and these internal
24 expenditures must include but not be limited to:

25 (A) expenditures that result in a reduction in the consumption of electrical energy in the large customer's
26 facility; and

27 (B) those amortized or nonamortized portions of expenditures for the purchase of power at retail or
28 wholesale that are for the acquisition or support of cost-effective renewable energy or conservation-related
29 activities.

30 (b) Large customers making these expenditures must receive a credit against the large customer's

1 universal system benefits charge, except that any of those amounts expended in a calendar year that exceed
2 that large customer's universal system benefits charge for the calendar year must be used as a credit against
3 those charges in future years until the total amount of those expenditures has been credited against that large
4 customer's universal system benefits charges.

5 (8) A public utility shall prepare and submit an annual summary report of the public utility's activities
6 relating to all universal system benefits programs to the commission, the department of revenue, and the energy
7 and telecommunications interim committee provided for in 5-5-230. A cooperative utility shall prepare and submit
8 annual summary reports of activities to the cooperative utility's respective local governing body, the statewide
9 cooperative utility office, and the energy and telecommunications interim committee. The statewide cooperative
10 utility office shall prepare and submit an annual summary report of the activities of individual cooperative utilities,
11 including a summary of the pooling of statewide credits, as provided in subsection (3), to the department of
12 revenue and the energy and telecommunications interim committee. The annual report of a public utility or of
13 the statewide cooperative utility office must include but is not limited to:

14 (a) the types of internal utility and customer programs being used to satisfy the provisions of this
15 chapter;

16 (b) the level of funding for those programs relative to the annual funding requirements prescribed in
17 subsection (2); and

18 (c) any payments made to the statewide funds in the event that internal funding was below the
19 prescribed annual funding requirements.

20 (9) A utility or large customer filing for a credit shall develop and maintain appropriate documentation
21 to support the utility's or the large customer's claim for the credit.

22 (10) (a) A large customer claiming credits for a calendar year shall submit an annual summary report
23 of its universal system benefits programs activities and expenditures to the department of revenue and to the
24 large customer's utility. The annual report of a large customer must identify each qualifying project or expenditure
25 for which it has claimed a credit and the amount of the credit. Prior approval by the department of revenue or
26 the utility is not required, except as provided in subsection (10)(b).

27 (b) If a large customer claims a credit that the department of revenue disallows in whole or in part, the
28 large customer is financially responsible for the disallowance. A large customer and the large customer's utility
29 may mutually agree that credits claimed by the large customer be first approved by the utility. If the utility
30 approves the large customer credit, the utility may be financially responsible for any subsequent disallowance."

